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No. 92-738

In the Supreme Court of the United States

OCTOBER TERM, 1992

RICHARD CRUZ BREQUE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the evidence at trial was sufficient to sustain petitioner's conviction for conspiring to launder money represented by a law enforcement officer to be the proceeds of specified unlawful activity, in violation of 18 U.S.C. 371 and 1956(a)(3)(C).

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-21a) is reported at 964 F.2d 381.

JURISDICTION

The judgment of the court of appeals was entered on June 15, 1992. A petition for rehearing was denied on July 28, 1992. The petition for a writ of certiorari was filed on October 26, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Texas, petitioner was convicted of conspiring to fail to file currency transaction reports, in violation of 31 U.S.C. 5313 and 5322(a), and conspiring to launder money represented by a law enforcement officer to be the proceeds of specified unlawful activity, in violation of 18 U.S.C. 371 and 1956(a)(3)(C). He was sentenced to 55 months' imprisonment, to be followed by three years of supervised release.

1. In the late 1980s, the Internal Revenue Service and the Customs Service began an investigation into whether petitioner and others were laundering unreported currency through El Centenario, a money exchange business in Laredo, Texas. IRS Agent Lucila Rangel contacted petitioner with money laundering proposals. In her undercover role, Rangel played "Lucy Moreno," a representative of a Miami organization interested in exchanging large amounts of United States currency for Mexican pesos. Pet. App. 2a; Gov't C.A. Br. 3.

On June 6, 1989, Agent Rangel telephoned petitioner and asked if he would exchange $20,000 for pesos. Petitioner agreed to do so for a ten percent commission. When Rangel remarked that the rate was very high, petitioner replied that he charged that much "because of the way things are." Rangel agreed to petitioner's terms, and they arranged to meet two days later at a restaurant in Laredo. Pet. App. 2a; Gov't C.A. Br. 3-4.

On June 8, Rangel arrived at the restaurant at the scheduled time. When petitioner and an associate arrived, petitioner informed Rangel that they would

drive together in Rangel's car to another nearby restaurant. When the group arrived at the second restaurant, petitioner arranged for them to sit in a private section. Following lunch, Rangel informed petitioner that she had only $15,000. Upset at that news, petitioner left the table to make a phone call. When he returned, he explained that the people he was dealing with had backed out of the transaction. Petitioner said, however, that a man named George Enriquez would join them shortly and would resolve the matter. Pet. App. 2a-3a; Gov't C.A. Br. 4.

A few minutes later, Enriquez arrived and announced that the necessary pesos were being gathered. When petitioner asked whether there were any papers to complete, Enriquez grimaced in response and said "oh, no, no no." Petitioner then said "okay" and Rangel said "okay." The group then drove to the El Centenario money exchange, where petitioner directed them to a back room and introduced them to Carlos Castiglioni. As petitioner stood by, Rangel removed $15,000 in cash from a camera case and placed it on Castiglioni's desk. After he counted the money on a machine, Castiglioni handed Rangel a large sum of pesos. Neither petitioner nor Castiglioni asked Rangel for any of the information necessary to complete a Currency Transaction Report (CTR), and no CTR was filed for the transaction. Following the deal, Rangel paid petitioner $1,500 for his services in arranging the exchange. Pet. App. 3a; Gov't C.A. Br. 4-5.

On June 15, 1989, Rangel telephoned petitioner, and they agreed to meet on June 20 in San Antonio to exchange $40,000 for pesos. During that telephone conversation, petitioner told Rangel that he would come to her hotel, pick up her money, and then drive

to a secret highway intersection where an unnamed person would meet him to make the exchange. Petitioner stated that he would return to Rangel's hotel afterward with the pesos. When Rangel mentioned that a suspicious looking car had followed them on June 8, petitioner replied that he didn't think "it was anything federal or anything." Pet. App. 4a; Gov't C.A. Br. 5-6.

The meeting on June 20 took place at a hotel in San Antonio, where it was recorded by a hidden video camera. Due to a misunderstanding, and because Castiglioni could not supply the required pesos, no transaction occurred that day. During the meeting, however, Agent Rangel made veiled references to drug dealing, and she and petitioner discussed illegal money laundering techniques. Rangel told petitioner that "my people down in * * * Florida wanted me to ask you some things, uh, we've got kind of a problem * * * we've got a lot of money coming in," which had to be put "into a useable form." When Rangel stated that "things are getting pretty warm in Florida," petitioner responded that the television show "Miami Vice" and similar shows "made everybody kinda jittery." Petitioner suggested that law enforcement agents were no longer satisfied "selling the boats and cars and everything" and "they want to get some more money out some place else and it's kinda dumb, it's stupid." Petitioner also agreed that "everybody's nervous." Pet. App. 4a-6a; Gov't C.A. Br. 6-8.

During that meeting, petitioner claimed that he owned two offshore corporations and that he could easily handle $500,000 at a time in currency transactions. He also boasted that he had influence with the Prime Minister of Bermuda, and he advised Rangel

to consider opening a bank account there. At one point, petitioner joked about the possibility that Rangel was a law enforcement officer: "I mean, you're not going to put somebody in jail over there if you were who, who you might be, I hope not. I'm going to knock on wood on that one." Pet. App. 6a; Gov't C.A. Br. 8-9.

Several times during the week after the June 20 meeting, petitioner telephoned Rangel with various proposals relating to money laundering. On June 27, 1989, Rangel returned one of petitioner's calls, and they arranged to meet on July 6 at a hotel in Laredo to exchange $60,000 for pesos. After the exchange, Rangel paid petitioner a six and one-half percent commission. Neither petitioner nor Castiglioni asked Rangel for the information necessary to complete a CTR, and no CTR was filed for the transaction. Pet. App. 7a; Gov't C.A. Br. 9-10.

After the July 6 transaction, Castiglioni exchanged United States currency for pesos on three occasions for Agent Rangel and another agent. On the first occasion, one of the agents told Castiglioni that their clients were "traffickers" who needed "money cleaned." At the second meeting, Castiglioni announced that he would charge an additional two percent fee for his services because of the dangers involved with laundering drug money. During the third meeting, the parties again discussed the illegal source of the funds. Pet. App. 7a; Gov't C.A. Br. 9-10.

On June 26, 1990, Castiglioni agreed to make an "emergency" exchange of $100,000 for pesos. Castiglioni informed Rangel that he was working with petitioner again and that petitioner would assist him in the transaction. Based on petitioner's advice that the service they were providing was

"worth a lot more for these people," Castiglioni insisted on a five percent fee for the exchange. When petitioner and Castiglioni arrived for the meeting as arranged, they were arrested. Pet. App. 8a-9a; Gov't C.A. Br. 10-12.

2. The court of appeals affirmed petitioner's convictions. Pet. App. 1a-21a. The court rejected petitioner's claim that the evidence was insufficient to sustain his conviction for conspiring with Enriquez and Castiglioni to fail to file CTRs. *Id.* at 10a-12a. The court likewise rejected petitioner's claim that the evidence was insufficient to sustain his conviction for conspiring to launder money represented by a law enforcement officer to be the proceeds of narcotics sales. *Id.* at 12a-14a. With respect to petitioner's sentence, however, the court concluded that the district court had improperly calculated his offense level under the Sentencing Guidelines, and it therefore remanded the case to the district court for resentencing. *Id.* at 17a-20a.

ARGUMENT

Petitioner contends that, in affirming his conviction for conspiring to violate 18 U.S.C. 1956(a)(3)(C), the court of appeals improperly dispensed with the requirement that a law enforcement officer must represent that the property involved in a money laundering transaction constitutes proceeds of a statutorily specified unlawful activity. Pet. 10-19.

The court of appeals did not disregard the "representation" element of Section 1956(a)(3)(C), as petitioner claims.[1] To the contrary, the court of ap-

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[1] Section 1956(a)(3)(C) provides in pertinent part:

peals stated that one of the essential elements of Section 1956(a)(3)(C) was that "the property involved in the transaction was represented by a law enforcement officer to be the proceeds of specified unlawful activity." Pet. App. 13a. In reviewing the sufficiency of the evidence to establish that element, the court "recognize[d] that Rangel never explicitly informed [petitioner] that the dollars were the proceeds of drug activity." *Ibid.* The court pointed out, however, that Agent Rangel "allude[d] to it strongly" during her meeting with petitioner on June 20, 1989. *Ibid.* The court observed that, "[w]hile Rangel's language with [petitioner] may have been ambiguous (unlike her [later] express representations to Castiglioni) to a layman, [petitioner's] responses reveal that [petitioner] understood her comments to mean that the currency came from drug trafficking activity." *Id.* at 14a. The court found further evi-

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(3) Whoever, with the intent—

* * * * *

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented by a law enforcement officer to be the proceeds of specified unlawful activity * * * shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph * * *, the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

Section 1956(c)(7) defines "specified unlawful activity" to include a wide range of crimes, including violations of narcotics laws.

dence that petitioner understood Rangel to mean that her funds derived from drug-related activities in the fact that, just prior to the June 28, 1990, meeting, petitioner "advised Castiglioni to charge a 5% commission because of the dangers of dealing with drug dealers." *Ibid.*

The court of appeals properly held that the jury could find from the evidence summarized above that Agent Rangel had made an implicit representation to petitioner that the funds he was being asked to launder were the proceeds of drug transactions. The statute does not require the representation to be explicit or to take any particular form; indeed, an explicit representation would be so unnatural in an undercover setting as to give rise to suspicion on the part of the target of the investigation. Because Rangel's statements, although guarded, were sufficient to apprise petitioner of the source of the funds, the court of appeals was correct in ruling that "there [was] sufficient evidence from which a jury might conclude that Rangel represented to [petitioner] that the funds were the proceeds of drug activities." *Ibid.*

There is no merit in petitioner's claim (Pet. 18-19) that the court of appeals' decision conflicts with decisions of the Second and Sixth Circuits. In *United States* v. *Stavroulakis*, 952 F.2d 686, 690-692 (2d Cir.), cert. denied, 112 S. Ct. 1982 (1992), the Second Circuit held that a conspiracy to violate Section 1956(a)(3)(B) does not require that co-conspirators all believe that money to be laundered is derived from the same unlawful source, as long as the unlawful source is proved to be one of the illegal specified activities enumerated in Section 1956(c)(7). In reaching that conclusion, the Second Circuit noted that it is "essential to culpability" that "the

money is represented to be the proceeds of one of the listed illegal sources." 952 F.2d at 691. In *United States* v. *Loehr*, 966 F.2d 201, 204 (6th Cir. 1992), cert. denied, No. 92-426 (Dec. 7, 1992), the Sixth Circuit similarly noted that, in order to prove a violation of Section 1956(a)(3)(B), "representations must be made by law enforcement officers, or those acting under their direction, and must relate to the specified unlawful conduct enumerated in the statute pursuant to § 1956(c)(7)." Those decisions merely state the elements of Section 1956(a)(3)(B), and in particular the requirement that a law enforcement officer represent the funds to be the proceeds of specified unlawful activity. Those decisions do not require that the representation be explicit or take any particular form.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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